

In the Supreme Court of the State of Alaska

**Sally Burattin, Rosemarie L Hotch,
and Patrick Philpott,**

Appellants,

v.

**Chilkat Indian Village and State of
Alaska,**

Appellees.

Trial Court Case No. **1JU-76-00516CI**

Supreme Court No. **S-17498**

Order

Date of Order: **3/12/2020**

Before: Bolger, Chief Justice, Winfree, Stowers, Maassen, and
Carney, Justices

Appellants Sally Burattin, Rosemarie L. Hotch, and Patrick Philpott filed this appeal on July 20, 2019. A notice was issued on September 3, setting a September 18 due date for the appellants' opening brief. Rather than filing a brief on that date, the appellants filed a motion to supplement the record, simultaneously moving for a stay of briefing and "entry of [a] new brief notice." The motion to supplement the record was denied on October 7. The appellate court clerk's office issued an overdue-brief notice the same day, requiring the appellants to file their opening brief along with a motion to accept late-filed brief, or else a properly supported motion for extension of time, no later than October 21.

On the new due date the appellants moved for a one-week extension, to October 28; before the court acted on that motion the appellants moved for another one-week extension. The motions were granted by order dated November 18, giving the appellants yet another week — until November 25 — to file their opening brief. But the order warned in bold, "**No further extensions will be granted.**"

On December 5 the clerk's office issued another overdue-brief notice,

stating that the appeal would be dismissed for want of prosecution unless a brief and motion to accept late-filed brief, or a properly supported motion for extension, was submitted by December 18. On December 18 the appellants requested another five-day extension of time, to December 23. The motion was not granted; in any event, nothing was filed by the requested new deadline. On December 26 the clerk's office emailed the appellants' counsel, Fred Triem, asking that he submit the opening brief and excerpt of record by email. Mr. Triem responded the following day, stating that he would be emailing them later that afternoon. A week went by, and on January 3 Mr. Triem sent the clerk's office a series of PDFs purporting to be installments of the excerpts of record. On January 7 Mr. Triem filed the appellants' opening brief, and on January 18 — 11 days later — he filed a motion for leave to file late brief.

Appellee Chilkat Indian Village opposed the appellants' October 28 motion for extension, and when that was granted it filed a motion to reconsider and to dismiss the appeal on December 10. The appellants filed an opposition to the motion to dismiss on December 23. The appellee renewed its motion to dismiss on January 24, 2020, in conjunction with an opposition to the appellants' motion for leave to file late brief. The appellants opposed the renewed motion to dismiss the appeal on January 31.

This record demonstrates that the appellants' counsel, Mr. Triem, has persistently failed to comply with the court's filing deadlines. At the same time, the court is reluctant to dismiss an appeal due to failures of the lawyer once the brief has been filed. Therefore, on consideration of the appellee's December 10 and January 24 motions to dismiss the appeal, the appellant's January 18 motion to accept late-filed brief, the appellee's February 6 motion to file reply supporting its motion to dismiss the appeal, and the respective oppositions to these motions,

IT IS ORDERED:

The appellee's February 6 motion to file reply supporting its motion to dismiss the appeal is **GRANTED**.

The appellee's December 10 and January 24 motions to dismiss the appeal are **DENIED**.

The appellants' January 18 motion to accept late-filed brief is **GRANTED**.

IT IS FURTHER ORDERED *sua sponte*:

1. Pursuant to Appellate Rule 510(b), for infraction of the appellate rules, appellants' counsel Fred Triem is ordered to pay the reasonable attorney's fees and costs incurred by the appellee for the drafting and filing of the following motions: (a) Request to Reconsider Additional Extension of Time to File Brief and to Dismiss this Appeal, filed December 10, 2019; (b) Opposition to Motion to File Impermissibly Late Brief; Renewed Motion for Dismissal of Appeal, filed January 24, 2020; and (c) Appellee's Request to File Reply Supporting Motion for Dismissal of Appeal, filed February 6, 2020. The appellee shall file itemized documentation of its fees and costs no later than **3/27/2020**. Mr. Triem shall have until **4/09/2020** to file any opposition.

2. Pursuant to Appellate Rule 510(c) Mr. Triem is ordered to show cause, within 15 days of this order (3/27/2020), why the court should not impose a fine of \$1,000 for his failure to comply with the appellate rules.

Entered at the direction of the court.

Clerk of the Appellate Courts

Meredith Montgomery

STOWERS, Justice, with whom BOLGER, Chief Justice, joins, dissenting.

I disagree with the court's denial of appellee Chilkat Indian Village's motion to dismiss this appeal; I would grant the motion. We do not grant extensions of time of this magnitude without a showing of extraordinary and compelling circumstances. The appellant's motion for leave to file a tardy brief does not satisfy this standard. As the court's order summarizes, appellant's counsel Fred Triem has a demonstrated history of failing to timely file briefs and motions, and failing to comply with the court's rules. This is not an isolated case. Mr. Triem has previously been sanctioned for similar failures and deficiencies. See *Chilkoot Lumber Co. v. Rainbow Glacier Seafoods, Inc.*, S-12921 (Triem sanctioned \$100 for failing to show cause why brief filed late); *Rude v. CIRI*, S-13823/13943 (Triem sanctioned \$250 for numerous timeliness issues); and *Curtis v. Chim*, S-16434 (Triem sanctioned \$1,000 for failure to comply with appellate rules).

It is clear Mr. Triem has a serious and unremedied problem with complying with court orders and deadlines. Given his history — both in other appeals and this appeal — ordering yet another show cause hearing, probable sanctions, and attorney's fees are insufficient to address his conduct. It is simply unjust to the appellees and to our system of justice to not dismiss this case. While one might argue dismissal actually punishes Mr. Triem's clients, they are not without recourse. They could file a legal malpractice action and they could file a bar complaint.

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